IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO.456/2006
(Ratan Kumar Sanghi Vs. State of Rajasthan)

Date of Order : 08/09/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mrs. Pramila Acharya for the petitioner.
Mr. Ashok Upadhyay, public prosecutor.

BY THE COURT:-

Issue notice for final disposal. Mr. Ashok Upadhyay, public prosecutor is directed to accepts the notice on behalf of non-petitioner State. He accepts the notice. With the consent of learned counsel for the parties, the matter is heard at the admission stage.

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner complainant has challenged the order dated 31.8.2004 passed by Chief Judicial Magistrate, Jodhpur (for short 'the trial court' hereinafter) in FR No.176/03 arising out of FIR No. 307/03 Police Station Sardarpura, Jodhpur.

I have heard learned counsel for the parties.

Learned counsel for the petitioner submits that the police filed a negative final report and no notice of FR was served

on the petitioner and without affording an opportunity of hearing to the petitioner complainant protesting the FR, the trial court accepted the negative final report.

From the perusal of the order impugned, it no where appears that any notice was served on the petitioner complainant before accepting the negative final report filed by the police.

In Bhagwant Singh Vs. Commissioner of Police and Anr. AIR 1985 SC 1285, Hon'ble Supreme Court held that there can be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2) (i) of S. 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process.

Keeping in view the decision of Hon'ble Supreme Court in Bhagwant Singh (supra) wherein it has been made mandatory to give notice to the complainant before accepting the final report filed by the police, so that the complainant can protest the conclusion arrived at by the police, the order impugned cannot be sustained and is liable to be set aside.

In the result, the petition is allowed. The order

impugned dated 31.8.2004 passed by the trial court is set aside and the matter is remanded to the Chief Judicial Magistrate, Jodhpur to hear the complainant and decide the matter afresh in accordance with law. The complainant shall appear before the trial court on 10.10.2006. No fresh notice is necessary.

(H.R.PANWAR),J.

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